A

## CANTERBURY ASIA SDN BHD v. DATO' WIRA AMINUDIN EMBI & ORS

COURT OF APPEAL, PUTRAJAYA
ABDUL AZIZ ABDUL RAHIM JCA
ROHANA YUSUF JCA
B PRASAD SANDOSHAM ABRAHAM JCA
[APPEAL NO: W-04(NCVC)(W)-347-11-2014]
18 MAY 2016

C ***CIVIL PROCEDURE:*** *Action – Limitation – Claim for payment for goods supplied and delivered – Acknowledgment of debt by financial statements – Whether liability renewed on date of acknowledgment – Whether acknowledgment extended limitation period – Whether there was unequivocal admission of acknowledgment of debt – Limitation Act 1953, s. 27*

D ***UNINCORPORATED ASSOCIATIONS:*** *Office bearers – Malaysian Rugby Union (MRU) – Claim for payment for goods supplied and delivered – Liability of office bearers – Whether council members personally liable – Whether council members correct parties to be sued on behalf of MRU – Sports Development Act, s. 40 – Whether applicable*

E The plaintiff ('the appellant') was the authorised distributor of rugby jerseys, shorts, kits and other paraphernalia. The appellant had supplied these items to the Malaysia Rugby Union ('MRU'), a sports body registered under the Sports Development Act 1997. A claim was brought by the appellant against the past and current council members of MRU ('the respondents') amounting to RM45,561 personally, for the goods sold and delivered to MRU between F the years 2003 and 2009. The plaintiff also claimed for RM3,000 for damages caused to an advertisement board which had been damaged while in the custody of MRU. The Magistrate, *inter alia*, held that the respondents were personally liable for the claim made by the appellant arising from the indebtedness of MRU and that MRU as an incorporated sports association, G could not be sued in its own name. Thus, the respondents were the proper parties who could be sued on behalf of MRU. In the circumstances, the Magistrate allowed part of the appellant's claim but dismissed the appellant's claim for goods sold and delivered in 2004 for being time barred. The Magistrate further held that the current council members of MRU were liable H to pay the appellant but not the previous council members of MRU. The respondents appealed against the order of the Magistrate and the appellant cross-appealed against the decision of the Magistrate, in dismissing part of the claim for reason of being time barred. The High Court Judge reversed the Magistrate's decision and held that the respondents could not be made liable I for the debt due to the appellant from MRU. However, the High Court Judge allowed the appellant's cross-appeal and held that the defence of limitation was not available to the respondents because there was valid acknowledgement by MRU of the total debt. Hence the present appeal. The

issues that arose for determination, *inter alia,* were (i) whether the respondents, being the current council members of MRU, were liable to pay for the debt due to the appellant; (ii) whether an unincorporated association like MRU could sue or be sued in the name of MRU; and (iii) whether the defence of limitation was available to the respondents because there was a valid acknowledgement by MRU.

**Held (allowing appeal with costs; setting aside order of High Court; reinstating order of Magistrate's Court)**
**Per Rohana Yusuf JCA delivering the judgment of the court:**

**(1)** MRU is a sports body registered under the Sports Development Act 1997. Unlike a registered society under the Societies Act 1966, a sports body under the Sports Development Act 1997 is not given the status of a legal body that can sue and be sued. The respondents being elected as council members were obliged to oversee the management of MRU. In the administration of an association, the council members should ensure that the indebtedness of the association be attended to since the purchases made were purely for the use of its members. (paras 21 & 22)

**(2)** The respondents were elected members of MRU and were not persons appointed by the Minister under the Sports Development Act 1997 as envisaged by s. 40. Therefore, the respondents could not seek protection under s. 40. (para 26)

**(3)** There was no acknowledgment of debt through the annual financial statement because there was no clear acknowledgement of the same in the said statement. Section 27(1) of the Limitation Act 1953 requires every acknowledgment to be in writing and signed by the person making the acknowledgment. There was no such unequivocal acknowledgment as required under s. 27 as evidence of acknowledgment. The Magistrate was correct in finding that part of the claim were statute-barred as the invoices in question were all dated in the year 2004 and the claim was filed in 2013. The High Court was in error in intervening with the finding by the Magistrate. (paras 28-31)

***Bahasa Malaysia*** *Translation*

Plaintif ('perayu') adalah pembekal jersi ragbi, seluar pendek, alat dan barangan lain kepada Kesatuan Ragbi Malaysia ('MRU'), sebuah badan sukan yang didaftarkan di bawah Akta Pembangunan Sukan 1997. Perayu telah memulakan tindakan terhadap bekas ahli dan ahli semasa MRU ('responden') untuk jumlah RM45,561 secara peribadi, bagi barangan yang dijual dan dihantar ke MRU antara tahun 2003 dan 2009. Plaintif juga menuntut RM3,000 bagi kerosakan papan iklan bawah jagaan MRU. Majistret, antara lain, memutuskan bahawa responden secara peribadi bertanggungjawab bagi tuntutan yang dibuat oleh perayu yang dibangkitkan daripada keberhutangan MRU dan MRU sebagai persatuan sukan, tidak

A boleh disaman atas namanya sendiri. Oleh itu, responden adalah pihak-pihak yang boleh disaman bagi pihak MRU. Majistret membenarkan sebahagian daripada tuntutan perayu tetapi menolak tuntutan perayu untuk barangan yang dijual dan dihantar pada tahun 2004 kerana terhalang oleh had masa. Majistret selanjutnya memutuskan bahawa ahli-ahli semasa MRU
B bertanggungjawab untuk membayar perayu tetapi bukan bekas ahli-ahlinya. Responden merayu terhadap perintah Majistret dan perayu membuat rayuan balas terhadap keputusan Majistret, kerana menolak sebahagian daripada tuntutan perayu atas alasan had masa. Hakim Mahkamah Tinggi mengakas keputusan Majistret dan memutuskan bahawa responden tidak
C bertanggungjawab terhadap hutang yang harus dibayar kepada perayu oleh MRU. Walau bagaimanapun, Hakim Mahkamah Tinggi membenarkan rayuan balas perayu dan memutuskan bahawa pembelaan had masa tidak boleh diguna pakai oleh responden kerana terdapat pengakuan jumlah hutang yang sah oleh MRU. Oleh itu, rayuan ini. Isu-isu yang dibangkitkan untuk pertimbangan, antara lain, adalah (i) sama ada responden, sebagai ahli semasa
D MRU, bertanggungjawab membayar hutang MRU kepada perayu; (ii) sama ada persatuan yang tidak diperbadan seperti MRU boleh menyaman atau disaman atas nama MRU; dan (iii) sama ada pembelaan had masa boleh diguna pakai oleh responden kerana terdapat pengakuan sah keberhutangan oleh MRU.

E **Diputuskan (membenarkan rayuan dengan kos; mengetepikan perintah Mahkamah Tinggi; memulihkan perintah Mahkamah Majistret)**
**Oleh Rohana Yusuf HMR menyampaikan penghakiman mahkamah:**

**(1)** MRU adalah satu badan sukan yang didaftarkan di bawah Akta
F Pembangunan Sukan 1997. Tidak seperti koperasi berdaftar di bawah Akta Pertubuhan 1966, satu badan sukan di bawah Akta Pembangunan Sukan 1997 tidak diberi status badan undang-undang yang boleh menyaman atau disaman. Responden yang dipilih sebagai ahli-ahli diwajibkan mengawasi pengurusan MRU. Dalam pentadbiran persatuan, ahli-ahli perlu memastikan bahawa hutang-hutang persatuan dibayar
G kerana pembelian dibuat semata-mata untuk kegunaan ahli-ahlinya.

**(2)** Responden dipilih sebagai ahli oleh MRU dan tidak dilantik oleh Menteri di bawah Akta Pembangunan Sukan 1997 seperti yang diperuntukkan oleh s. 40. Oleh itu, responden tidak boleh diberi
H perlindungan di bawah s. 40.

**(3)** Tiada pengakuan keberhutangan melalui penyata kewangan tahunan kerana tidak ada pengakuan jelas dalam kenyataan tersebut. Seksyen 27(1) Akta Had Masa 1953 memerlukan setiap pengakuan dibuat secara bertulis dan ditandatangani oleh pihak yang membuat pengakuan
I tersebut. Tiada pengakuan jelas seperti yang dikehendaki di bawah s. 27 sebagai bukti pengakuan. Majistret betul dalam membuat dapatan bahawa sebahagian daripada tuntutan dihalang had masa kerana invois

berkenaan semuanya bertarikh pada tahun 2004 dan tuntutan difailkan pada 2013. Mahkamah Tinggi terkhilaf apabila campur tangan dengan dapatan Majistret.

**Case(s) referred to:**
*Chin Mee Keong & Ors v. Pesuruhjaya Sukan [2007] 5 CLJ 363 CA* ***(refd)***
*S Kulasingam & Anor v. Commissioner of Land, Federal Territory & Ors [1982] CLJ 65; [1982] CLJ (Rep) 314 FC* ***(refd)***
*Yee Weng Kai v. Yam Kong Seng & Anor [2013] 4 CLJ 493 CA* ***(refd)***

**Legislation referred to:**
Limitation Act 1953, s. 27(1)
Sports Development Act 1997, ss. 18, 40

*For the appellant - K Lopez; M/s Kamarudin & Partners*
*For the respondents - Darshan Singh Aulakh & Jaswant Kaur; M/s Darshan & Jaswant*

*[Editor's note: Appeal from High Court, Kuala Lumpur; Appeal No: 11BNCVC-23-02-2014 (overruled).]*

*Reported by Sandra Gabriel*

## JUDGMENT

**Rohana Yusuf JCA:**

**[1]** This is an appeal by Canterbury Asia Sdn Bhd against the decision of the High Court at Kuala Lumpur given on 19 August 2014 which had overruled the decision of the learned Magistrate.

**[2]** After hearing the submissions of parties on 24 November 2015, we allowed the appeal. We reinstated the decision of the learned Magistrate and set aside the order of the High Court. We will refer to the parties as how they were referred to at the Magistrate's Court.

**Background Facts**

**[3]** The plaintiff was at the material time an authorised distributor of "Canterbury" of New Zealand brand of rugby jerseys, shorts, kits and other paraphernalia and was operating its business in Malaysia. The plaintiff had supplied these items to the Malaysia Rugby Union, a sports body registered under the Sports Development Act 1997.

**[4]** The defendants were all the past and current council members of the Malaysia Rugby Union (MRU) and had served as council members at different period of time as follows:

(i) the first to 13th defendants – from the 2010 to 2013.

(ii) the 14th to 20th defendants together with the sixth, eighth, ninth and 12th – from the 2007 to 2010.

(iii) the 21st to 25th defendants together with the 6th, 8th, 12th, 14th, 15th and 19th defendants – from the 2004 to 2007.

The 26th defendant is MRU which is an unincorporated sports association registered under the Sports Development Act 1997.

**[5]** MRU had ordered from the plaintiff, to supply them with rugby kits and other goods for the purpose of the Malaysian Rugby team between the periods of 30 November 2004 to 29 May 2009. The invoices, delivery notes and quotations for the goods are found at pp. 355 to 374 of the appeal record in Part C. The plaintiff had also supplied MRU with a CCC (Canterbury) A-Board (Advertisement Board) for rugby tournaments. The said Board was said to have been damaged while in the custody of MRU. The invoices issued for the damaged CCC (Canterbury) A-Board is found at p. 375 of the appeal record in Part C.

**[6]** At the Magistrate's Court the plaintiff had claimed for a sum of RM45,561 for the goods sold and delivered, plus RM3,000 for damages caused to the CCC A-Board whilst in the custody of MRU. The plaintiff's claim for RM48,561 is against all the 25 defendants personally, for the goods sold and delivered to MRU between the years 2003 and 2009. Each of the defendants had been on the MRU council members at different times during the period of 2003 to 2009 including the 12 defendants. The 12 defendants in this appeal were in fact the serving council members at the time the writ of summons was filed in 2013. Alternatively, the plaintiff claimed for the sum of RM7,510 only from the sixth, eighth, 12th, 14th, 15th, 19th, 21st, 22nd, 23rd, 24th and 25th defendants because the goods were sold and delivered in the year 2004 when these defendants were council members (see p. 42 of the appeal record (part A)).

**[7]** After filing the claim, the plaintiff had later on, amended its statement of claim to bring in MRU as the 26th defendant. The writ of summons and the statement of claim was served on MRU, without naming any official to represent it. No appearance was filed by the 26th defendant as the writ of summons and statement of claim was not served on any of its official. The plaintiff then proceeded to obtain a judgment in default of appearance (JID) against the 26th defendant on 10 January 2014. The JID was later set aside on the ground that the 26th defendant was not properly served.

**Findings Of The Magistrate's Court**

**[8]** After a full trial the learned Magistrate held that the 12 defendants by virtue of being the current council members are personally liable for the claim made by the plaintiff arising from the indebtedness of the 26th defendant. The learned Magistrate on evidence, was satisfied that MRU was, is and continued to be indebted to the plaintiff and that the debt remained unpaid. The learned Magistrate also held that MRU as an incorporated sports association, cannot be sued in its own name and the 12 defendants as the present council members of MRU are the proper parties who can sue and be sued in court on behalf of MRU.

**[9]** The learned Magistrate further found that the current council members are liable to pay the plaintiff but not the previous council members since the present council members are the ones who have the control over MRU and not the previous council members. The previous according to the learned Magistrate would not have any more access to the administration of MRU.

**[10]** The learned Magistrate then allowed part of the plaintiff's claim in the sum of RM41,051 (out of the total claim of RM48,561) together with interest and costs against all the 12 defendants. The balance of the plaintiff's claim of RM7,510 for goods delivered in 2004, was however dismissed by the learned Magistrate for being time-barred.

**[11]** The plaintiff's claim for a *Sanderson* order for the defendants to bear the costs payable by the plaintiff to the 17th, 18th, 20th and 24th defendants, (some of the previous council members of MRU) who had contested the plaintiff's claim at the trial was dismissed by the learned Magistrate. The 12 defendants appealed against the order of the Magistrate to the High Court and the plaintiff cross-appealed against the decision of the Magistrate, in dismissing part of the claim for reason of time barred.

**Findings Of The High Court**

**[12]** At the High Court the learned High Court Judge Dato' Nik Hasmat binti Nik Mohamad had reversed the Magistrate's decision and accepted the defendants' counsel's submission that the 12 defendants being the present council members of MRU cannot be made liable for the debt due to the plaintiff from MRU. The learned High Court Judge however allowed the plaintiff's cross-appeal and held that the defence of limitation was not available to the defendants because there was valid acknowledgement by MRU of the total debt of RM48,561 due from the defendants to the plaintiff in its financial audited account tabled at MRU annual general meetings. The documents which was said to have acknowledged the debt in writing is the MRU financial statements of 31 December 2011 (pp. 381-387 of the appeal record (part C) marked as exh. P7. This financial statement was confirmed by the Honorary Treasurer, the ninth defendant who testified as SD5.

**[13]** The learned High Court Judge however affirmed that part of the decision of the learned Magistrate who had dismissed the plaintiff's claim for a *Sanderson* order.

**[14]** Leave was obtained by the defendants from this court on 30 October 2014 to lodge this appeal. The plaintiff had also cross-appealed on the finding made by the learned High Court Judge that the defence of limitation was not available to the defendants for the sum of RM7,510 as well, as costs.

**[15]** There was no written ground of judgment by the learned High Court Judge and we had to proceed to hear the appeal without the benefit of Her Ladyship's grounds of judgment.

**[16]** The appeal came before us on 24 November 2015 which we heard and allowed. We set aside the order of the High Court and we affirmed the decision of the learned Magistrate.

**Grounds Of Appeal**

**[17]** Before us, learned plaintiff's counsel raised several grounds of appeal as listed under the following headings:

(i) whether it is the defendants as the present office bearers/council members of MRU who are liable to pay for the debt due to the appellant/plaintiff from MRU or must MRU itself pay the debt to the appellant/plaintiff.

(ii) whether an unincorporated association like MRU can sue or be sued in the name of MRU or must the action be brought by or against the office bearers in their own name but representing their unincorporated association.

(iii) whether the defence of limitation was not available to the respondents/defendants because there was valid acknowledgment by MRU.

(iv) whether a *Sanderson* order can be ordered for the respondents/defendants to bear the costs payable by the appellant/plaintiff to the 17th, 18th, 20th and 24th defendants in the Kuala Lumpur Magistrate's Court action.

**[18]** Having heard the submission of parties, in our view the main issue requiring our determination is whether or not the 12 defendants being the current council members of MRU are liable to pay the liability of MRU in the form of claims for outstanding due to the plaintiff.

**[19]** First we noted that the defence of the defendants, was to dispute the debt incurred by MRU but at trial it was abandoned. In the written submission of counsel of the defendants before the High Court it was admitted that the MRU did make orders for the goods. The only issue they had, was who was to pay for these goods. The amount claimed by the plaintiff was in fact not in dispute during the trial. The dispute only being on the issue of whether the defendants being the present council members can be made liable personally to pay the debt of MRU.

**[20]** Secondly we also noted that the order of the High Court is highly inconsistent. Her Ladyship had allowed the cross-appeal on the amount of RM7,510 found to be barred by limitation by the Magistrate's Court. The learned High Court Judge found liability against the 12 defendants for this sum despite her finding that they are not personally liable to the indebtedness of MRU.

## Our Decision

**[21]** MRU is a sports body registered under the Sports Development Act 1997. Unlike a registered society under the Societies Act 1966, a sports body under the Sports Development Act 1997 is not given the status of a legal body that can sue and be sued. This issue was deliberated and referred to by this court in *Chin Mee Keong & Ors v. Pesuruhjaya Sukan* [2007] 5 CLJ 363; [2007] 6 MLJ 193. In that case the Malaysia Taekwando Association which was a registered sports body under s. 18 of the Sports Development Act 1997, sought for leave to apply for a judicial review. The court speaking through James Foong JCA (as His Lordship then was) held that an association cannot sue in its own name. His Lordship remarked that preferably it should sue through its registered public office, otherwise it is permissible for any office bearer of the association to sue on its behalf. The Federal Court case of *S Kulasingam & Anor v. Commissioner of Land, Federal Territory & Ors* [1982] CLJ 65; [1982] CLJ (Rep) 314; [1982] 1 MLJ 204 was referred to in *Chin Mee Keong*. Having taking into account of the Federal Court decision, the Court of Appeal in that case concluded that it is permissible for any of the office bearer of the association to mount a claim on behalf of its members.

**[22]** We are in agreement with the legal proposition in *Chin Mee Keong*. In our view, the 12 defendants being elected council members are obliged to oversee the management of MRU. It is for this reason that the council members or the committee of an association, being the governing body is legally empowered with the capacity to sue on behalf of an association. In that same light, in the administration of an association the council members as the governing body in this case should ensure that the indebtedness of the association be attended to since the purchases made in this case were purely for the use of its members.

**[23]** The defendants have knowingly offered themselves to be elected to become the council members of MRU knowing the financial state of affairs, including the debts due to the plaintiff which will have to be paid. The defendants did not plead nor contended that they took over on the condition that they will not be liable for the outstanding debts. The evidence before the learned Magistrate, in fact shows that they acknowledged that the debt was outstanding *albeit* a legacy item and that there was no sufficient funds to pay.

**[24]** The defendants being the current council members are the only ones who have the power, control and authority over MRU at the material time. They could have caused the funds of MRU to be used to pay the debt due to the plaintiff. The defendants however refused or failed to do so. And neither did the defendants being the current council members provide any solution to resolve the debt owing. They are now merely disputing on who is liable to pay the outstanding debt although they have not originally pleaded their case in that way.

**[25]** It was raised in the submission of learned counsel for the plaintiff that s. 40 of the Sports Development Act 1997 was referred to by the learned High Court Judge during the appeal before her, on her own volition. After referring to s. 40 the learned judge found that provision of the law protects the defendants as council members from the liability claimed by the plaintiff. Resulting from this the defendants in the current appeal raised the issue on the application of s. 40 though it was never the case of the defendants at the trial that they were sheltered by s. 40.

**[26]** Without getting into the discourse of the parties on this issue we are satisfied that s. 40 has no application to the facts of this case. It is clear that s. 40 was legislated to give protection from any legal suit for anything done in good faith, to a person who is appointed by the Minister under the Sports Development Act 1997. The defendants here are elected members of the MRU and are not persons appointed by the Minister under the Act as envisaged by s. 40 and therefore cannot seek protection under it. If that was the rationale of the finding by the learned High Court Judge, we are in agreement with learned counsel for the plaintiff that the learned High Court Judge had erred in her application of s. 40. We say so, because as we have stated earlier we do not have the benefit of her grounds of judgment and we are not clear as to Her Ladyship's finding on the same.

**[27]** We further find it strange that the learned High Court Judge had allowed the cross claim. Her Ladyship had held that the defendants would be liable to pay RM7,510 as it was not barred by limitation, when in the first place Her Ladyship had found that the defendants should not be made personally liable for debt of MRU. We however agreed with the finding of the learned Magistrate that the part of the claim, in the sum of RM7,510 are statute barred as the invoices in question were all dated in the year 2004.

**[28]** Learned counsel for the plaintiff contended that there was acknowledgement of this debt by virtue of the statement in the financial account of MRU up to the year 2013. We do not agree with the contention of learned counsel that there was any acknowledgment of debt which had extended the limitation period. We agree with the finding of the learned Magistrate that limitation had set in when the invoices relating to the sum of RM7,510 were all dated in the year 2004 when the claim was filed in 2013. On the facts of this appeal, we agree with the learned Magistrate there was no acknowledgement of this debt, as required under the Limitation Act 1953.

**[29]** We further do not agree with learned plaintiff's counsel that there was any acknowledgment of debt through the annual financial statement because there was no clear acknowledgement of the same in the said statement. Section 27(1) of the Limitation Act 1953 requires every acknowledgment to be in writing and signed by the person making the acknowledgment.

**[30]** In *Yee Weng Kai v. Yam Kong Seng & Anor* [2013] 4 CLJ 493; [2013] 2 MLJ 575, the Court of Appeal held that the acknowledgment of debt must be an unequivocal acknowledgement and in writing. An SMS message was found to be no acknowledgment as required under s. 27 of the Limitation Act in the case. We have also perused through the financial statement alluded to by the appellant in this case. We do not find such unequivocal acknowledgment as required under s. 27, as evidence of acknowledgment. We find the High Court was in error in intervening with this finding by the learned Magistrate.

**[31]** On the issue of costs, we find no appealable error made by the learned Magistrate. Costs being discretion of the trial judge, cannot be disturbed for no apparent reason. We do not find any good reason to interfere with the same.

**[32]** For all the above reasons we agree with the submissions of learned counsel for the plaintiff that the defendants are to be held liable to the claim made by the plaintiff. We therefore allowed the appeal with costs and set aside the order made by the High Court. The decision of the learned Magistrate is reinstated.

**[33]** In the result, we therefore allow the appeal with costs. The order of the High Court was set aside and we reinstated the order of the Magistrate's Court.